

REMARKS

The Final Office Action mailed October 28, 2008 has been received and reviewed. This response is being filed with a Request for Continued Examination.

Claims 1-6, 8-13 and 16-27 are pending with claims 18-22 having been withdrawn. Claims 1-6, 8-13, 16, 17 and 23-27 are rejected. Claims 1, 6, 8-10, 13, 16, 17, 23 and 24 are amended. Claims 25 and 27 are cancelled. Claim 28 is added. The Applicant submits that the claims are now in condition for allowance for the reasons set forth hereinafter.

Rejection Of Claims 1-6, 8-13, 16 And 17 Under 35 U.S.C. § 112, First Paragraph

Claims 1-6, 8-13, 16 and 17 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written enablement requirement. Specifically, the Examiner states that claim 1 recites that the sandwich-like product is formed with a shape and dimension conforming to the shape of the vendable container, and that claim 10 recites a sandwich-like product that is sized to conform to a vendable sealed enclosure of the container. The Examiner notes that claims 1 and 10 do not recite the sandwich-like product being contained within the non-beverage product-enclosing portion. Claims 1 and 10 are amended to clarify that the cylindrical container has a main container portion (see, paragraph [0010] of the specification; FIGS. 1, 3 and 4) sized to receive a sandwich-like product. The rejection is, therefore, overcome by clarification of the structure.

Rejection Of Claims 1-6, 8, 9 And 23-26 Under 35 U.S.C. § 112, First Paragraph

Claims 1-6, 8, 9 and 23-26 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner states that claim 1 recites "single serving sized beverages" which is considered new matter. Claim 1 is amended to delete the phrase. The rejection is overcome. With respect to claim 23, the Examiner states that the limitations "that are non-concealed

and known to the purchaser” and “ a purposely purchased” end product are considered new matter. Claim 23 is amended to delete the referenced phrases. Alternatively, claim 23 is amended to recite that the products are consumer-selected products. Support for the amendment is found at paragraph [0011] of the specification wherein it is described that the invention is directed to providing the consumer with a wider variety of product *choices* vendable from a single vending machine. Consequently, the objective of the invention is to provide the consumer with the ability to conscientiously select those products that the consumer wishes to consume for whatever intended purpose. The objective of the invention is not to provide unknown and potentially undesired products to the consumer, but rather to provide a variety of product choices from which a consumer may select to satisfy a consumption urge or need. The Applicant submits that the amendment of claim 23 is explicitly and inherently supported by the specification.

Rejection Of Claims 1-6, 8-13, 16 And 17 Under 35 U.S.C. § 112, 2nd Paragraph

Claims 1-6, 8-13, 16 and 17 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner states that claim 1 recites the limitations of “said vendable container” and “single serving sized beverages.” The rejection is overcome by amendment of claim 1 to delete the limitations.

The Examiner states that claims 9 and 13 recite wherein the container is comprised of separable compartments separably affixed together for dispensing, which the Examiner contends is inconsistent with claim 1. As noted above, claim 1 is amended to render the rejection moot and to claim 9, and claim 11 is amended to render the rejection moot as to claim 13. The Applicant submits that the dependent claims are congruent with the recitation of the respective independent claims.

The Examiner states that claim 23 recites the limitation “ready to consume” which is indefinite. The rejection is overcome by amendment of claim 23 to delete the rejected recitation.

Rejection Of Claims 23 And 24 Under 35 U.S.C. § 102(b) [Bezek, et al.]

Claims 23 and 24 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bezek, et al. (US 6,472,007) ("Bezek"). The Examiner states that Bezek discloses a vendable container comprising a sealed product enclosing portion (figure 1), an opening mechanism (26) and at least two disparate products. The rejection is overcome by amendment of claims 23 and 24 to recite that one of the at least two disparate items contained within the container is a non-food item that is consumer-selected for consumption by a consumer. Bezek fails to teach at least one, or both, of the products contained within the container to be a non-comestible product. Claims 23 and 24 are not anticipated, therefore.

Rejection Of Claims 1, 10 and 23 Under 35 U.S.C. § 103(a)

Claims 1, 10 and 23 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Warner (US 2384863) in view of Savage, et al. (US 20030071036) ("Savage") and Kirkland (US 6006945) for the same reasons previously stated by the Examiner. Specifically, the Examiner previously stated that Warner discloses a vending machine capable of dispensing beverages and sandwich-like products, and further teaches wrapping sandwiches in a napkin and placing them in a cardboard cylinder, but that Warner is silent regarding a completely sealed container. The Examiner states that Savage teaches the conventionality of sealing a vendable sandwich-like product and that Brabson teaches the conventionality of providing a container that can comprise both beverage and non-beverage food items. The Examiner raises additional issues concerning the use of the phrase "vendable container," as previously rejected under § 112, which the Applicant submits is rendered moot or overcome by amendment of claim 1, for the reasons stated above. The Examiner adds that Kirkland teaches vending cylindrical containers that comprise food products and that it would have been obvious to one of skill in the art to vend a

sandwich so packaged to protect it from damage. The rejection is again traversed on the grounds that a *prima facie* case of obviousness cannot be established.

The invention recited by claim 1 is a sandwich contained in a cylindrical container for vendability that is fully enclosed to retain the sandwich within the container until opened by the consumer for consumption. As previously argued, Warner discloses a vending machine for heating and dispensing hot dogs where the sausage and bread product are wrapped in a napkin and held within a cylindrical cardboard tube for heating and dispensing. The Applicant again urges that Warner very specifically teaches an open-ended tubular container for the hot dog as required for heating the product; otherwise, if close-ended, the hot dog would explode due to the moisture content of the hot dog and bun. Even more significantly, however, Warner specifically teaches that the tubular carrier is especially selected, particularly for sausage sandwiches, to "compensate[s] for any variation in size of the materials contained in the cylinder." (page 2, line 8-15.) Consequently, Warner explicitly teaches away from placement of a sandwich-like product in a sealed enclosure in order to allow for variances in the size and materials of the sandwich product, and those of skill in the art would clearly find no relevant teaching in Warner for producing the claimed invention of a sandwich in an enclosed container. Savage discloses packaging for enabling the contents of the pack to be microwaved; however, Savage provides no disclosure whatever of placement of a sandwich in a cylindrical container for dispensing in a vending machine as claimed. Therefore, one of skill in the art would still not find sufficient teaching in Warner combined with Savage to provide a sandwich-like product in a closed cylindrical container suitable for vending. Warner, in fact, teaches a vendable hot dog product in an open-ended container that teaches away from either Savage or Kirkland, and the references cannot be combined, therefore, to obviate claim 1. Again, since Warner and Savage fail to disclose or suggest a sealed enclosure for a sandwich in a cylindrical container as claimed, one of skill in the art would find no teaching or motivation to include an opening mechanism as taught by Kirkland for a

tubular carrier as described in Warner that is already, and necessarily, open at both ends to access the hot dog. Claim 1 is not obviated.

Additionally, neither Warner, Savage nor Kirkland teach or suggest a sandwich-like product that is specifically formulated to have an extended shelf-life of up to three years as recited by claim 4 and new claim 28. The open-ended container of Warner and the sleeve of Savage fail to support the packaging and dispensing of a sandwich-like product that has an extended shelf-life as claimed, and no presumed combination of Warner, Savage and Kirkland can obviate claims 4 and 28.

Claim 10 recites a vendable cylindrical container having two compartments, one being a main container portion sized to receive a sandwich-like product, and containing a sandwich-like product, and the other compartment being smaller in size and containing a disparate food product. Neither Warner, Savage or Kirkland, alone or in combination, teach a vendable package of food products as claimed, nor provide any appreciation for the provision of disparate food products, one being a sandwich-like product, within a single, vendable container as claimed. Claim 10 is not obviated.

Claim 23 recites a vendable container structured to vend a combination of products, one being a non-food item contained within the same vendable container. Neither Warner, Savage or Kirkland, alone or in combination, teach a vendable package of products as claimed, and claim 23 is, therefore, not obviated.

Rejection Of Claims 1-4, 6, 8-11, 13, 16, 17, 23 And 24 Under 35 U.S.C. § 103(a)

Claims 1-4, 6, 8-11, 13, 16, 17, 23 and 24 are rejected as being unpatentable over Nedblake in view of Bezek and Yu (US 5279841), and further in view of Brabson (US 6,415,940) and Kirkland. The Examiner formerly stated that Nedblake teaches a container sized and shaped for being dispensed through pathways of a vending machine structured to vend containerized beverages, the container having a non-beverage food product enclosing portion (14), a top (34), a bottom (32) to provide a unitarily sealed enclosure, and at minimum two elements that form a chamber which would have to be separated. The Examiner states that claims 1, 10 and 23 differ from

Nedblake in reciting a food product enclosing portion having an opening mechanism, which the Examiner contends is taught by Bezek. The Examiner states that Bezek also teaches an opening mechanism on each compartment for breaching the sealed enclosure which contains disparate foods. The Examiner states that Yu is cited as further evidence of a conventional opening mechanism for vendable compartmentalized containers, and that Yu teaches a combination package that can be equal to the size of an aluminum can filled with a soft drink, thereby making it vendable. The Examiner states that Yu teaches combinations of disparate food products in the container. The Examiner states that Brabson is evidence that it is conventional in the art to provide a container that can comprise both beverage and non-beverage food items (citing column 6, lines 52-67). The rejection is overcome by clarifying amendment of the claims and is traversed on the grounds that a *prima facie* case of obviousness cannot be established.

Amended claim 1 recites a cylindrical container having a main container portion that comprises the greater dimension of the cylindrical container and which is sized to receive a sandwich-like product. Support for the amendment is found at paragraph [0010] of the specification and in FIGS. 1, 3 and 4. As such, the main container portion constitutes the larger portion of the cylindrical container and the sandwich-like product is thereby dimensioned to constitute the greater portion of non-beverage food items contained within the container. The vendable cylindrical container is thereby dimensioned to provide a sandwich-like product as the principal or main food product of the arrangement.

Nedblake fails to teach an arrangement as claimed. At best, Nedblake discloses a beverage bottle to which is connected a small disk-like cylindrical container that is sized to receive a round sandwich product. The main container portion of Nedblake is a beverage container that is sized for vending, as opposed to the recited structure of claim 1 where the main container portion is sized to and does contain a sandwich-like product for vending in the cylindrical container. Nedblake fails to teach what is recited by claim 1 and Nedblake fails to recognize the advantage of providing a sandwich-like product as the principal food product as claimed. Yu fails to teach a container with the

claimed dimensions for supporting a sandwich-like product. Also, Bezek and Brabson both fail to provide any teaching of a container of the dimensions claimed or any teaching of enclosing a sandwich-like product in a container of the dimension as claimed. Therefore, one of skill in the art would find no relevant teaching or motivation to provide a cylindrical, vendable container with the structural dimension and contents as claimed for dispensing a sandwich-like product, and claims 1-4, 6, 8 and 9 are not obviated. Particularly with respect to claims 4 and 28, none of the cited references teach or suggest the claimed packaging arrangement for containing and/or vending a sandwich-like product that has an extended shelf-life as claimed, and those claims are not obviated.

Amended claim 10 recites a vendable cylindrical container having a main container portion that is sized to receive, and does contain, a sandwich-like product, and a second compartment that is smaller than the main container portion, the second compartment containing a disparate food product. Nedblake fails to describe or suggest the claimed structure. Nedblake, by contrast, discloses a container where the main container portion is a beverage bottle containing a beverage, and a smaller container is affixed to the bottom of the bottle for containing a sandwich-like product. Nedblake fails to disclose the recited packaged combination and, in fact, discloses an arrangement which is contrary to that which is claimed. Therefore, one of skill in the art would not find Nedblake relevant or instructive for providing a cylindrical container that has two disparate food products in a cylindrical container that is sized for dispensing as claimed. While Bezek discloses non-beverage products in a container, Bezek fails to provide any relevant disclosure for providing a container for a sandwich-like product in a main container portion as claimed; nor does Yu or Brabson for the reasons stated previously. Therefore, one of skill in the art would find no relevant teaching or motivation in the cited references and claims 10, 11, 13, 16 and 17 are not obviated.

Amended claim 23 requires a container structured and arranged to contain two disparate products, at least one of which is a non-food product. Neither Nedblake, Bezek, Yu or Brabson disclose or suggest such an arrangement of consumer products

in a single vendable container. Therefore, claims 23 and 24 are not obviated.

The Applicant reiterates again that the teachings of Nedblake, Bezek, Yu and Brabson are not generic with respect to the contents that may be contained in the containers of the respective teachings. Nedblake provides no specific teaching for the claimed invention of a sandwich-like product with a non-food item. Bezek is directed to snack foods of the type manufactured by Frito-Lay®, which does not include sandwiches, and Yu is very specifically directed to combinations of potable liquids, not sandwiches or non-beverage or non-food products.

Rejection Of Claim 27 Under 35 U.S.C. § 103(a)

Claim 27 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Nedblake, Bezek and Yu (as applied above), and further in view of Pinyot (US 6971521). The rejection is rendered moot by the cancellation of claim 27.

Rejection Of Claim 5 Under 35 U.S.C. § 103(a)

Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Nedblake, Bezek, Yu, Brabson and Kirkland (as applied above) and further in view of Sanford for the reasons stated in the Office Action of January 24, 2008. The Examiner previously stated that Nedblake is silent in teaching a sandwich further enclosed in a wrapper, which is taught by Sanford. The Examiner stated that Sanford also teaches a first compartment containing the sandwich and a second compartment for a second disparate food item, such as candy, and that it is conventional to wrap a sandwich and place the wrapped sandwich in a container for freshness. The Examiner now adds that Sanford teaches that it has been conventional to wrap a sandwich to protect it and then place it in a secondary container, thus providing a wrapping for the sandwich of Nedblake would be obvious. The rejection is again traversed for the reasons previously argued, but stressing again that all of the packaging features as expressly taught by Sanford must be considered by the Examiner in obviation of the claim based on the cited references. The fact cannot be ignored that the construction of the Sanford

follower would not allow it to be placed in the round sandwich container taught by Nedblake, and would not be usable in the constructions of Bezek, Yu, Brabson or Kirkland. It would be clear to one of skill in the art that the envelope of Sanford could not be placed in the lower container (14) of Nedblake and, consequently, the Sanford teaching cannot be combined with Nedblake, or the structures of the other references, to obviate what is recited by claim 5. Additionally, Sanford does not teach a wrapper of the dimensions required by claim 5 and cannot, therefore, provide any teaching to obviate claim 5.

Rejection Of Claims 1-4, 6, 8-11, 13, 16, 17 And 27 Under 35 U.S.C. § 103(a)

Claims 1-4, 6, 8-11, 13, 16, 17 and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Pinyot in view of Nedblake, Bezek and Yu for the reasons stated in the Office Action of January 24, 2008, and further in light of Brabson. The Examiner previously stated with respect to claims 1 and 10 that Pinyot teaches the claimed container except for a sandwich product, but that Nedblake teaches the sandwich product element. The Examiner stated that since Pinyot and Nedblake are similar, it would have been obvious to place a sandwich as taught by Nedblake in a container as taught by Pinyot. The rejection is overcome by clarifying amendment of claims 1 and 10 which, as amended require a vendable cylindrical container having a main container portion that is sized to receive a sandwich-like product, the main container portion having a dimension which constitutes a larger portion or dimension of the cylindrical container. Pinyot fails, in the first instance, to disclose a packaging or container arrangement for a sandwich as recited by claims 1 and 10. Secondly, Pinyot fails to disclose or appreciate providing a container dimensioned as claimed to provide a sandwich-like product in a main container portion that constitutes the greater dimension of the vendable cylindrical container. Nedblake, Bezek, Yu and Brabson each fail to disclose or appreciate the claimed vendable cylindrical container arrangement as recited by claims 1 and 10. Therefore, claims 1-4, 6, 8, 9-11, 13, 16 and 17 are not obviated by the cited references.

Rejection Of Claims 1-4, 6, 7-13 And 16-17 Under 35 U.S.C. § 103(a)

Claims 1-4, 6, 7-13, 16 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bezek, in view of Nedblake, Yu and Kafentzis for the reasons given in the Office Action of January 24, 2008, and further in view of Brabson. The Examiner previously stated that regarding claims 1 and 10, Bezek teaches a container sized and shaped for dispensing as claimed, but does not disclose a sandwich-like product, which is taught by Nedblake, and that Nedblake, Bezek, Yu and Kafentzis teach the combination of disparate compartmentalized products. The rejection is overcome with clarifying amendment of claims 1 and 10 as noted previously. As noted, amended claims 1 and 10 require a vendable cylindrical container having a main container portion sized to receive, and which does contain, a sandwich-like product, the main container portion having a specified dimension for containing and dispensing a sandwich-like product as the principal food product of the vendable food product. The recited vendable product is neither disclosed nor suggested by Bezek, Nedblake, Yu, Kafentzis or Brabson. None of the cited references discloses the dimensioned cylindrical container as recited by claim 1 and by claim 10, and, therefore, the claims are not obviated. None of the references acknowledge the advantage of providing a sandwich-like product as the main food product. Therefore, the claims are not obviated. The Applicant notes again that none of the references discloses, suggests or appreciates the advantage of providing a sandwich-like product that has an extended shelf-life as recited by claims 4 and 28. Again, the claims are not obviated by the cited references.

Rejection Of Claim 5 Under 35 U.S.C. § 103(a)

Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable, presumably, over Bezek, Nedblake, Yu and Kafentzis, and further in view of Sanford. The Examiner states Bezek and Nedblake teach a sandwich in a vendable container as noted above with respect to claim 1, and that Sanford teaches a wrapper for the sandwich. The Applicant incorporates the arguments presented previously with respect to the rejection

of claim 5 in view of Nedblake, Bezek, Yu, Brabson, Kirkland and Sanford. None of the cited references discloses the claimed structure, alone or in combination, and Sanford cannot be combined with any of the constructs of the other cited references to obviate that which is recited by claim 5.

Rejection Of Claims 23, 25 And 26 Under 35 U.S.C. § 103(a)

Claims 23, 25 and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kaufman in view of Kirkland for the reasons stated in the Office Action of January 24, 2008. The Examiner stated that Kaufman discloses a container comprising two comestible products (a T-shirt and money) and that the container is to be dispensed in a vending machine that also vends food products such as soda. The Examiner stated that Kaufman is silent in teaching an opening mechanism accessing the interior, which is taught by Kirkland and it would have been obvious to combine the opening mechanism of Kirkland with the container of Kaufman. The rejection is overcome by clarifying amendment that the recited vendable combination is provided with separate compartments, which is neither taught nor suggested by Kaufman. In addition, the Applicant notes again that the shrink-wrapped T-shirt arrangement as taught by Kaufman is well known by those of skill in the art to not require an opening mechanism as taught by Kirkland, or as disclosed by any other container suitable for vending beverages, since shrink wrap is openable by tearing, shearing or otherwise rendering a breach in the film of the plastic. Thus, Kaufman fails to teach that which is claimed, and is not combinable with Kirkland to obviate claims 23 and 26.

Rejection Of Claims 23 And 24 Under 35 U.S.C. § 103

Claims 23 and 24 are rejected under 35 U.S.C. § 103 as being unpatentable over Rea in view of Nedblake, Bezek and Yu. The Examiner states that Rea discloses at least two disparate products which are food products with opening means for accessing the interior of the container, and that Nedblake, Bezek and Yu are relied on to teach the conventionality of packaging cooked products which can be vended. The

rejection is overcome by amendment of claim 23 to recite that at least one of the consumer-selected products is a non-food item. Neither Rea, Nedblake, Bezek or Yu disclose the claimed arrangement, nor appreciate the advantage of providing such an arrangement. Accordingly, claims 23 and 24 are not obviated by any of the cited references.

CONCLUSION

The Applicant submits that claims 1-6, 8-13, 16, 17, 23, 24, 26 and 28 present patentable subject matter. Reconsideration and allowance are requested.

Respectfully submitted,



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